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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	:	Examiner: Yehdega Retta
MICHAEL MÜLLER	)	
	:	Art Unit: 3622
Application No.: 09/810,395	)	
	:	Confirmation No.: 6004
Filed: March 19, 2001	)	
	:	
For: APPARATUS, METHOD AND	)	
PROGRAM FOR FORMULATING	:	
AND SOLVING PROBLEMS OVER	)	
A NETWORK	:	November 3, 2010

Commissioner for Patents  
P.O. Box 1450  
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BRIEF ON APPEAL  
AND PETITION FOR EXTENSION OF TIME

Sir:

Appellant petitions to extend the time for filing an Appeal Brief for three months from August 7, 2010 to and including November 7, 2010. The amount of \$555.00 in payment of the extension fee is being paid concurrently herewith. Please charge any additional fee required for the extension, and credit any overpayment, to Deposit Account 06-1205.

This is an appeal from the final rejection of Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 set forth in the Office Action dated December 7, 2009. A Notice of Appeal was electronically filed June 7, 2010.

This Brief on Appeal is being filed along with a payment of \$270.00, the amount required under 37 C.F.R. §41.20(b)(2). Please charge any additional fee and credit any overpayment to our Deposit Account No. 06-1205.

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## II. Real Party in Interest

The real party in interest is Michael Müller.

### III. Related Appeals and Interferences

There are no related appeals or interferences.

#### IV. Status of Claims

Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 stand finally rejected and are under appeal. Claims 2, 3, 23-54, 60, 83-92, 95-97, 102, and 103 have been cancelled.

Appellant is appealing the rejection of Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101. The full text of the appealed claims appears in Section IX.

V. Status of Amendments

A Final Office Action issued on December 7, 2009. The claims were not amended after the issuance of the December 7, 2009 Final Rejection.

## VI. Summary of Claimed Subject Matter

In conventional arrangements, a user having a question posts it on a Web site where it may be viewed by other users, who then provide answers in response.

(Specification, page 1, line 17 to page 2, line 13). To provide incentives to users to submit answers, it is known to offer an award, such as a monetary award, to the user who provides the final and correct one. (Specification, page 2, lines 18-22).

The existing schemes suffer drawbacks stemming from the fact that they do not give an award to a user providing an answer until the answer is considered to be complete, i.e., the problem is determined to have been solved. (Specification, page 3, lines 1-11). This existing schemes under-value the importance of intermediate answers, which while not providing the actual and final solution, may very often give some direction towards the final solution, and which therefore can constitute an important, and in many cases crucial, part of the problem solving process. Despite the importance of such intermediate answers, however, conventional techniques provide insufficient incentives to users to submit them.

Example aspects to which Appellant's application relate overcome the above limitation by distributing a portion of a total award before, and not after, it has been determined that the problem has been solved, to at least one participant who contributed a suggested solution. By using this approach, a participant who, for example, does not know the ultimate solution to the problem, but does have a partial solution, or an idea for moving towards a solution, is given a sufficient incentive, in the form of a portion of an award, to provide it. In the context of independent Claims 1, 55, and 65, participants who contribute at

least non-final suggested solutions to the formulated problem receive portions of the award before it is determined that the problem has been solved.

One example aspect of Appellant's invention set forth in appealed Claim 1 relates to a server on a network. (Fig. 1; page 13, lines 12-15). The server is operable to receive from a first participant via the network a formulation of a problem to be solved. (Figs. 1 and 2, refs. 1 and 29; page 14, lines 10-17). The server is also operable to receive from a plurality of other participants via the network at least non-final suggested solutions to the problem. (Fig. 1, refs. 3 and 29 ; page 16, lines 1-4). The server is also operable to distribute portions of an award to those participants who contribute the at least non-final suggested solutions to the problem. (Fig. 2, ref. 7; page 16, lines 9-18). The server is configured to distribute a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem. (Fig. 2, ref. 7; page 16, lines 9-18; and page 19, lines 19-21). The server provides control tools for use by the first participant for controlling the distribution of the portion of the award to the other participants. (Fig. 2, ref. 6; page 17, lines 4-22; page 20, line 4 to page 25, line 4. The distributions of the portions of the award are varied over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem. (Fig. 2, refs. 4, 7, 18; page 17, lines 4-13; page 18, lines 18-21; page 19, line 19 to page 20, line 8).

Among other features described above for the server of Claim 1 is that the server is operable to (1) to receive from a plurality of other participants via the network at least non-final suggested solutions to the problem and (2) distribute a portion of the award, before it has been determined that the problem has been solved, to at least one participant

who contributed the at least non-final suggested solution to the problem. By virtue of these features, the server can receive non-final solutions from a plurality of participants other than the first participant. This permits the first participant to view one or more non-final solutions to the formulated problem, and not just a plurality of final solutions. More importantly, the system does not wait to award a participant until a final solution is determined, but instead can distribute a portion of the award to a participant who contributes a non-final solution before it has been determined that the problem has been solved. Thus, individual contributors collaborating on a final solution to the problem are given an incentive to collaborate by being awarded a portion of an award for their contributions even before it is determined that the problem has been solved. (Specification, page 16, lines 9-18).

In another example aspect of the invention set forth in appealed Claim 55, an apparatus for facilitating problem solving on a network is provided. (Fig. 1, refs. 2, 29, and 28; Fig. 10, refs. 2, 24; Fig. 13, refs. 42, 43, and 48; page 13, line 12 to page 14, line 8; page 34, lines 7-11; and page 39, lines 6-19. The apparatus includes means for transmitting and receiving from a first participant via the network a formulation of a problem to be solved. (Fig. 1, refs. 1, 2, 28, 29; Fig. 2, refs. 1, 2, 5; Fig. 10, ref. 1; Fig. 13, ref. 48; page 14, lines 10-17; page 15, lines 14-22; page 34, lines 7-11; page 42, line 18 to page 43, line 6; page 40, lines 15-18). The apparatus includes means for transmitting and receiving from a plurality of other participants via the network at least non-final suggested solutions to the problem. (Fig. 1, refs. 2, 3, 28, 29; Fig. 2, refs. 2, 3, 4, 5, 18; Fig. 10, refs. 3 and 4; Fig. 13, refs. 42 and 43; page 14, line 21 to page 15, line 7; page 16, lines 1-7; page 39, lines 16-19; page 34, lines 11-14). The apparatus also includes means for distributing portions of an award to those participants who contribute the at least non-final suggested solutions to the problem. (Fig. 2,

ref. 7; Fig. 11, ref. 7; Fig. 15, refs. 46 and 47; page 18, line 18 to page 19, line 4; page 21, line 1 to page 22, line 13; page 23, line 22 to page 24, line 10; page 26, lines 3-16; page 34, line 22 to page 35, line 7; page 39, line 16-19). The apparatus includes means for controlling the distribution of the portions of the award including means for distributing a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem. (Fig. 2, ref. 7; Fig. 12, refs. 6, 40; page 18, line 18 to page 19, line 4; page 21, line 1 to page 22, line 13; page 23, line 22 to page 24, line 10; page 26, lines 3-16; page 35, lines 12-17; page 39, lines 14-16). The apparatus includes means for controlling the portion of the award to the other participants, wherein the distribution of the portions of the award is varied over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem. (Fig. 2, ref. 7; Fig. 12, refs 6 and 40; Fig. 15, refs. 46 and 47; page 18, line 18 to page 19, line 4; page 21, line 1 to page 22, line 13; page 23, line 22 to page 24, line 10; page 26, lines 3-16; page 35, line 9 to page 36, line 13; page 39, lines 14-16).

In another example aspect of the invention set forth in appealed Claim 65 a method of facilitating problem solving over a network is provided. (Figs. 2 and 3; page 14, line 10 to page 15, line 15. The method also includes transmitting to a server via the network a formulation of a problem from a first participant. (Figs. 1 and 2, refs. 1 and 29; page 14, lines 10-17). The method also includes receiving at the server via the network from a plurality of other participants at least non-final suggested solutions to the problem. (Fig. 1, refs. 3 and 29 ; page 16, lines 1-4). The method includes distributing from the server via the network portions of an award to those participants who contribute the at least non-final

suggested solutions to the problem. (Fig. 2, ref. 7; page 16, lines 9-18). The method also includes controlling at the server with tools the distribution of the portions of the award to distribute a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem. (Fig. 2, ref. 7; page 16, lines 9-18; and page 19, lines 19-21). The method includes controlling the award to the other participants, wherein the distribution of the portions of the award is varied over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem. (Fig. 2, refs. 4, 7, 18; page 17, lines 4-13; page 18, lines 18-21; page 19, line 19 to page 20, line 8).

## VII. Grounds of Rejection To Be Reviewed On Appeal

Whether Claims 1, 4-9, 12-19, 22, 55-59, 61, 62, 64-72, 74-76, 78, 79, 93, 94, and 98-101, are anticipated under 35 U.S.C. § 102(e) over U.S. Patent No. 6,064,978 (Gardner et al.; hereinafter “Gardner”).

Whether Claims 20 and 80 are obvious under 35 U.S.C. § 103(a) over Gardner, in view of Experts Exchange How-To; “How Experts Exchange® Works”; <http://web.archive.org/web/1997042101341/www.experts-xchange.com/info/howto.html>; hereinafter “Experts-Exchange”.

Whether Claims 10, 21, 63, 81, and 82 are obvious under 35 U.S.C. § 103(a) over Gardner in view of U.S. Patent No. 6,694,355 (Bahar).

Whether Claims 11 and 73 are obvious under 35 U.S.C. § 103(a) over Gardner and Bahar, in view of Official Notice.

## VIII. Argument

### Rejection under 35 U.S.C. § 102(e) over Gardner

#### Claims 1, 4, 5, 6, 12, 14, 15, 55-58, 65, 67-69, and 75

Consistent with case law, MPEP § 2131 provides guidelines for determining anticipation under 35 U.S.C. § 102 in view of Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). As stated in Verdegaal Bros., "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." More recently the Federal Circuit has stated that "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." Brown v. 3M, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). See also MPEP § 2131.02. Also, as discussed in Richardson v. Suzuki Motor Co., "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

For the reasons given below the Office Action has failed to establish that Gardner anticipates independent Claims 1, 55, and 65. Accordingly, for at least the same reasons, dependent Claims 4, 5, 6, 12, 14, 15, 56, 57, 58, 67-69, and 75 are believed by Appellant to be patentable by virtue of their dependence on patentable base Claims 1, 55, and

65. Accordingly, the § 102(e) rejection of the subject claims is deficient and should be reversed.

Independent Claim 1 recites, in part, that the server receives from a first participant a formulation of a problem, and receives from a plurality of other participants suggested solutions to the problem. Before it is determined that the problem has been solved, a portion of the award is distributed to at least one participant who contributed a suggested solution to the problem. As such, incentives are provided to participants to suggest intermediate solutions that advance the problem towards a final one.

Independent Claim 55 relates to an apparatus for facilitating problem solving on a network, and is drafted in means plus function form. The apparatus of Claim 55 includes means for transmitting and receiving from a first participant via the network a formulation of a problem to be solved. The apparatus of Claim 55 also includes means for transmitting and receiving from a plurality of other participants via the network at least non-final suggested solutions to the problem. Also, the apparatus of Claim 55 includes means for distributing portions of an award to those participants who contribute the at least non-final suggested solutions to the problem. Further, the apparatus of Claim 55 includes means for controlling the distribution of the portions of the award including means for distributing a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem.

Independent Claim 65 relates to a method for facilitating problem solving over a network, and is drafted in term of steps carried out by a server. The method of Claim 65 includes transmitting to a server via the network a formulation of a problem from a first participant, and receiving at the server via the network from a plurality of other participants

at least non-final suggested solutions to the problem. The method of Claim 65 also includes distributing from the server via the network portions of an award to those participants who contribute the at least non-final suggested solutions to the problem. Also, the method of Claim 65 includes controlling at the server with tools the distribution of the portions of the award to distribute a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem.

One feature of independent Claims 1, 55, and 65 is that a portion of the award is distributed, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem. Without citation to any specific portion of Gardner, the Office Action states at page 8 that:

According to applicant's specification points are awarded and the distribution of the offered prize to participating idea providers (answerers) who have acquired points worth money is guaranteed (see [0064]-[0065]). Same as applicant invention in Gardner points are assigned to the answerer before the problem is deemed solved and the points are awards.

Emphasis Added. Appellant submits that this statement is actually contradicted by the express teachings of Gardner, because in Gardner any assignment of points to a participant is apparently made after, not before, the problem is deemed solved. See, e.g., Gardner, Fig. 1, steps 110 and 112; col. 3, lines 33-55. Indeed, by virtue of the Gardner system, the assignment of points is not guaranteed, because a complete solution to the problem is a precondition to any participant receiving an assignment of points.

Gardner relates to a computer networked question and answer system. In the Gardner system, an asker "A" publishes a question and assigns it a number of points "N". The asker "A" receives comments on his question, and with each comment received

determines whether it constitutes all or part of the answer. If a comment does constitute all or part of an answer, asker "A" assigns a quantitative evaluation (e.g. a letter grade or numerical score) to the comment. See, e.g., Gardner, Fig. 1, ref. 108. The process continues until the answer is deemed by the asker as being complete, at which stage points are actually awarded only to those whose submitted comments were deemed to constitute all or part of the answer, using the quantitative evaluations as a weighting factor. See, e.g., Gardner, Fig. 1, ref. 112; and col. 3, lines 46 to 53.

The Office Action states at page 8, that in Gardner "points are assigned to the answerer before the problem is deemed solved and the points are awarded." See, Office Action at page 8, lines 9 and 10. However, this statement appears to be contrary to Fig. 1 of Gardner, which is referred to extensively in the Office Action at page 7. As shown in Fig. 1, and described at col. 2, lines 40-45, at step 110, "If the comments chosen in step 106 and evaluated in step 108 are sufficient to constitute a complete answer, the process proceeds to step 112. Otherwise the process returns to step 104 to await more comments." It is not until after step 110 is complete, that "a number of answer points to be awarded to the set of answerers B who provided the comments evaluated in step 108" are awarded. That is, contrary to the assertion in the Office Action at pages 7 and 8, in Gardner no answer points are awarded to anyone until the answer is deemed complete and satisfactory by the question asker "A". See, e.g., Gardner, Fig. 1, ref. 110.

Indeed, Gardner states at col. 3, lines 18-20, "Points are not actually deducted from A's bank until the published question is satisfactorily answered." That is, in Gardner, a complete and satisfactory answer, as deemed by the asker "A", is required prior to any awarding (i.e., distribution) of answer points. Because the distribution of points only comes

after the asker “A” determines the problem is solved, the distribution of an award is not guaranteed to those participants who have contributed answers. Such is the case if the problem solver or answerer provides an answer and the asker “A” is not satisfied by his subjective belief (or is ignoring the answer or is simply not responding). As a result of this uncertainty in being rewarded for contributing to problem solution activity, participants are less likely to be motivated to contribute in the Gardner system.

Although the asker “A” in Gardner can assign a quantitative evaluation factor to an answerer who provides part of the answer, that assignment is not an award of any type, and certainly is not even an award of the question points which are placed in escrow by the asker “A”. See, e.g., Fig. 1, ref. 102. The assignment of a quantitative evaluation factor does not guarantee that an award will be distributed for the partial answer, since the asker “A” in Gardner may reevaluate the evaluations that he has already made, or the final solution to the problem may never be deemed to have been arrived at, in which case none of the contributors receives any points. See Gardner at col. 3, lines 37 and 38; Fig. 1, step 108. Thus, Gardner simply does not provide an effective incentive to submit intermediate solutions, but instead only rewards by distributing awards upon successfully arriving at a determined solution.

On the other hand, it is notable that in the mentioned independent claims, a portion of the award is distributed before, and not after, it is determined that the problem has been solved, to at least one participant who contributed a suggested solution. That is, a portion of the award is guaranteed to be distributed, regardless of whether or not it is determined that a solution is or would be arrived at. This is very different from the process shown in Fig. 1 of Gardner, where no answer points are awarded until after it is determined that an answer is completed. See, e.g., Gardner, Fig. 1, refs. 110 and 112. Unlike in

Gardner, by distributing a portion of the award in this fashion, before the problem is solved, the present independent claims provide a concrete incentive to submit an intermediate solution well before the final solution become inevitable.

Moreover, Appellant submits that the Office Action is deficient at least for the reason that it fails to provide any citation from Gardner corresponding to the subject matter that allegedly is deemed to be taught by Gardner. See, 37 CFR § 1.104(c)(2) and MPEP § 707.<sup>1</sup> As noted above, at page 8 the Office Action asserts, without citation to any portion of Gardner, that Gardner teaches a feature of the independent Claims 1, 55, and 65, i.e., that a portion of the award is distributed, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem. Appellant submits that the Gardner reference is believed to be complex and shows or describes technologies other than that claimed by the Appellant, and therefore, particular part(s) of Gardner relied on in the Office Action should have been designated as nearly as practicable. Appellant submits that the failure of the Office to so designate the particular part(s) of Gardner relied on in the Office Action was improper and renders the Office Action deficient.

For at least the foregoing reasons, Appellant respectfully submits that the rationale set forth in the Office Action for the rejection of the mentioned claims is not supported by Gardner and that the Office Action is deficient for failure to designate the particular part(s) of Gardner relied on in the Office Action. Because Gardner neither teaches

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<sup>1</sup> 37 CFR §1.104(c)(2) states “In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the Appellant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.” Emphases added.

nor suggests that a portion of the award is distributed, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem, Appellant respectfully submits that Gardner cannot possibly anticipate the present independent claims, and requests withdrawal of the rejections of those claims.

Claims 7, 59, 70

Dependent Claims 7, 59, and 70 relate to storage of other tools for use by the other participants for controlling the distribution of the portions of the award among themselves.

As discussed at page 17, lines 20 to 22 and page 25, line 12 to page 26, line 3, a “room award” control tool 19 is provided to the idea providers 3 in a tool bar assigned to them. The room award control tool allows the idea providers to award, for example, a portion of the prize sum 7 by awarding commensurate room award points to the solution contribution of the respective other idea providers 3 that is/are the most creative in the view of the idea providers 3.<sup>2</sup> By virtue of the features of Claims 7, 59, and 70, it is possible to provide tools for use by the other participants, i.e., the idea providers 3 shown in Figs. 1-3, to control how portions of the award are distributed among the idea providers.

The Office Action cites to col. 4, lines 57-67 of Gardner as teaching the above features of dependent Claims 7, 59, and 70. However, as best understood from the cited portion of Gardner, a public display 600 is provided for ranking the best answerers according to the number of answer points each has earned. Also, certain high earning answerers may be selected for participation in a separate WWW site where questions and answers are

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<sup>2</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

exchanged for payment instead of non-negotiable points. However, this ranking arrangement in Gardner has nothing to do with providing tools that can be used by the answerers to use to distribute portions of the award among themselves. As discussed above, Gardner only permits the question asker “A” to assign quantitative evaluations to each comment deemed to constitute part or all of an answer. However, nothing in Gardner is seen by Appellant to disclose or suggest tools that can be used by the answerers themselves in Gardner to control the distribution of portions of the award among themselves.

Therefore, those claims are believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of those claims.

#### Claims 13 and 74

Dependent Claims 13 and 74 relate to blockage of further development of a selected suggested solution. As described at page 23, lines 5-11, by use of the “Dead End” control tool 26, “If a suggested solution 4 is marked in the continuous text of the problem chat 18 by the function “dead end” 26, this means that the problem formulator 1 would like to prevent any further development of the problem solving in the context of this problem proposal 4 blocked in this manner. Consequently, an unnecessary waste of resources is prevented.<sup>3</sup> Accordingly, blocking the solution path does not preclude the further participation of the idea provider(s) who provided their idea(s) which led to the terminated solution path.

Gardner does not disclose or suggest blocking of further development of a selected suggested solution. To the contrary, as cited to in the Office Action, at col. 1, lines

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<sup>3</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

53-65, Gardner merely describes an option by the question asker “A” to reject an answer provided by one of the answerers. Apparently, in Gardner this is nothing more than a decision to not accept an answer as a satisfactory part or all of an answer. This functionally stops a specific answerer from giving further input and decides not to distribute an award to the answerer. It does not prevent another answerer from submitting the same answer or another answer along similar lines.

Therefore, those claims are believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of those claims.

#### Claims 8 and 71

Dependent Claims 8 and 71 relate to a case where if the first participant has not awarded all of the portions of the award to the other participants within a predetermined time, at least some of the remaining portions of the award are automatically distributed to the other participant who has received within the predetermined time the largest fraction of the award.

Nothing in Gardner has been identified in the last Office Action, and nothing has been found in Gardner by Appellant, that discloses or suggests the features of Claims 8 and 71. Indeed, as discussed above, the Gardner system does not even award answerers whose answers are accepted by the asker “A” if the asker does not determine that the solution has been found. Certainly, nothing has been found in Gardner that discloses or suggests anything related to awarding portions of the award within any predetermined time.

Therefore, those claims are believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of those claims.

Claims 9, 66, 72

Dependent Claims 9, 66, and 72 relate to the storage of tools for use by a presenter for controlling the award to the other participants and varying over the course of a development of the suggested solutions the distribution of the portions of the award for the purpose of guiding the development of a final solution to the problem.

The Office Action asserts that these features are disclosed at col. 3, lines 20-45 and col. 5, lines 18-38 of Gardner. Appellant respectfully disagrees. With respect to col. 5, lines 18-38, Gardner merely states at col. 5, line 24 that “Many other variations are possible”. However, none of the example variations referred to thereafter in Gardner discusses or suggests tools for use by a presenter for controlling the award to the other participants and varying over the course of a development of the suggested solutions the distribution of the portions of the award for the purpose of guiding the development of a final solution to the problem. Indeed, all of the examples of variations proposed at col. 5, lines 18-38 relate to modifications that mainly limit the functionality of the system described previously in Gardner with respect to Fig. 1. Moreover, since in Gardner the answer points are not actually awarded until after the completion of the course of a development, Gardner cannot teach or suggest anything about controlling the award to the other participants and varying over the course of a development of the suggested solutions the distribution of the portions of the award for the purpose of guiding the development of a final solution to the problem.

Therefore, those claims are believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of those claims.

Claims 16-19, 61, 76-79

Dependent Claims 16, 61, and 76 relate to reception of a selection of at least one competent authority from the other participants on the basis of suggested solutions delivered by the at least one competent authority via the network and facilitation of a private problem resolution discussion between a client and the selected at least one competent authority.

Nothing has been found in Gardner that is seen to teach or suggest the facilitation of a private problem resolution discussion between a client and the selected at least one competent authority. In Gardner, answerers with sufficient answer points may be selected for participation as answerers in a separate WWW site where questions and answers are exchanged for payment, instead of for non-negotiable points. See, e.g., Gardner at col. 4, lines 64-67. However, this portion of Gardner relates merely to a modification of the basic system shown in Fig. 1 by substituting a different paid WWW site and replacing the award points with a reward in the format of a negotiable payment. Nothing in Gardner teaches or suggests that the use of the alternate paid WWW site facilitates a private problem resolution discussion between a client and the selected at least one competent authority. Indeed, apparently the paid WWW site operates like the WWW site used for awarding award points, and thus, the only difference would be the award point ranking of the participants allowed to access the paid WWW site. However, the use of a high award point ranking participants as the pool of participants in the Gardner system still does not anticipate or suggest that any one

of them has been selected by a client, much less that a private problem resolution can be facilitated between the client and the client's selected authorities.

Therefore, those claims are believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of those claims.

Claims 93, 94, 98-101

Dependent Claims 93, 98, and 100 relate to reception from at least one visitor of a quality assessment of the suggested solutions. Moreover, Claims 94, 99, and 101 relate to a determination of a quality assessment based on the portions of the award received for the respective suggested solutions. By virtue of the features of Claims 93, 98, and 100, a visitor, such as another party other than the participants, provides their own quality assessments of the suggested solutions. By virtue of the features of Claims 94, 99, and 101, a quality assessment is determined based on the portions of the award received for the respective suggested solutions. As a result, as portions of the award are distributed even before the final solution is determined, a quality assessment can be determined based on the award received.<sup>4</sup> Furthermore, a differentiation between a "room award" contributed by the participants themselves and reward portions ("brain point") contributed by the problem provider allows for the ability to compare the favorite input from the participants' audience point of view and from the problem provider's point of view. See, e.g., Specification at page 25, line 12 to page 26, line 8 and page 21, lines 1-17.

The Office Action states that "regarding claims 93, 94, 98, 99, 100, and 101, Gardner teaches determining a quality assessment based on the portions of the award

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<sup>4</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

received.” As understood by Appellant, Gardner describes the possibility to assign “a quantitative evaluation, e.g. a letter grade or numerical score, to each of the comments.” This could be a numerical score related to the quantity of comments or a manual score by decision of the “question asker”. However, Gardner is not seen to disclose or suggest a score (i.e., a quality assessment) related to “the portions of the award received” because, as discussed above, Gardner does not provide for the possibility of distributing portions of an award during a problem solving session before a solution is determined.

Therefore, those claims are believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of those claims.

#### Claims 22 and 64

Dependent Claims 22 and 64 relate to authorization of the level of the amount of each portion of the award before the other participants send the suggested solutions. Thus, according to Claims 22 and 64, the distribution of the portions of the award is finalized.

In one example embodiment, by virtue of the features of Claims 22 and 64 a first participant, such as the question asker, can authorize, before the other participants send their solutions, an amount of each portion of the award. This feature is useful, for example, for increasing or decreasing the reward during the solution process to award more of the award for solving more difficult portions of the question.<sup>5</sup> The features of Claims 22 and 64 also allow interactive increase of the amount of the award during the development of the final solution. Such adjustment reflects the helpfulness of non-final solution activity already

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<sup>5</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

provided by participants after proof of the quality of the suggested solutions has been made.

Gardner is not seen to disclose or suggest the feature of Claims 22 and 64.<sup>6</sup>

As understood from Gardner, the question asker “A” only can decide the full amount of award points to award for the complete solution to the question. However, the asker is not capable of authorizing a portion of the award points before the participants send their solutions. Also, Appellant notes that Gardner cannot assign an evaluation percentage prior to receiving each answer.

Therefore, those claims are believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of those claims.

#### Claim 62

Dependent Claim 62 relates to the provision of a negotiation forum for the at least one competent authority and the client to negotiate a level of award to be awarded to the at least one competent authority for the suggested solution. By virtue of the features of Claim 62 a negotiation forum is provided during a problem solving session. For example, during a problem solving session portions of an award are distributed, and as a result of the substance of the answers proposed by the participants, the participants can illustrate evidence of their competence in the problem solving process.<sup>7</sup> This evidence could convince the problem provider to enter in negotiations with the participants about the level of the award for their respective suggested solutions. Gardner is not seen to disclose or suggest this feature.

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<sup>6</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

As discussed above with respect to independent Claim 55, on which Claim 62 depends, Gardner does not provide the ability to distribute portions of an award during the solution process, and does not even provide the ability to distribute the award before it is determined that a solution is arrived at. Indeed, page 4 of the Office Action concedes that Gardner fails to teach “providing a negotiation forum between the competent authority and the client”.

Therefore, Claim 62 is believed to be clearly patentable over Gardner, and Appellant respectfully requests withdrawal of the Section 102(e) rejection of that claim.

#### Rejections under 35 U.S.C. § 103(a) over Gardner and Experts-Exchange

##### Claims 20 and 80

Consistent with case law, MPEP § 2141 provides guidelines for determining obviousness under 35 U.S.C. § 103 in view of the recent Supreme Court decision, KSR International Co. v. Teleflex Inc., 550 U.S. 82 USPQ 2d 1385 (2007). MPEP §§ 2142 and 2143 provide guidelines for establishing a *prima facie* case of obviousness and examples of basic requirements of a *prima facie* case of obviousness. Among the exemplary rationales that may support a conclusion of obviousness are combining prior art elements according to known methods to yield predictable results, simple substitution of one known element for another to obtain predictable results, use of a known technique to improve similar devices in the same way, applying a known technique to a known device ready for improvement to yield predictable results, and the commonly-used teaching, suggestion, or motivation (TSM) test.

For the reasons given below, it is respectfully submitted that the Office Action

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<sup>7</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

has failed to establish a *prima facie* case of obviousness against the subject claims.

Accordingly, the § 103(a) rejection of those claims is deficient and should be reversed.

Dependent Claims 20 and 80 relate to the provision of a negotiation forum for the at least one competent authority and the client to negotiate a level of award to be awarded to the at least one competent authority for the suggested solution. By virtue of the features of Claims 20 and 80 a negotiation forum is provided during a problem solving session. For example, during a problem solving session portions of an award are distributed, and as a result of the substance of the answers proposed by the participants, the participants can illustrate evidence of their competence in the problem solving process.<sup>8</sup> This evidence could convince the problem provider to enter in negotiations with the participants about the level of the award for their respective suggested solutions.

As discussed above with respect to Claims 1, and 65, on which Claims 20 and 80 respectively depend, Gardner does not provide the ability to distributed portions of an award during the solution process, and does not even provide the ability to distribute the award before it is determined that a solution is arrived at. Page 4 of the Office Action concedes that Gardner fails to teach “providing a negotiation forum between the competent authority and the client”. However, the Office Action asserts that page 1 of Experts-Exchange remedies the deficiencies of Gardner. Appellants disagree for at least the following reasons.

Page 1 of Experts-Exchange discusses the background, and associated products related to the pictorial representation shown in page 1. In the pictorial representation, a question is posted by a customer and experts review the question and

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<sup>8</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

provide an answer, which consists of multiple comments, solutions, and suggestions.

However, this arrangement fails to disclose anything about the provision of a negotiation forum for a competent authority and the client to negotiate a level of award to be awarded to the competent authority for the suggested solution. Indeed, nothing in page 1 of Experts-Exchange mentions anything about any negotiation of a level of award to be awarded to the “experts”. The applied portion of Experts-Exchange discusses a proposed “third-product scheduled for fall 1997, will be an exclusively paid-for “gold” WWW site”. (Emphasis in original.) However, this portion of Experts-Exchange mentions nothing about a forum for negotiation at all, and merely suggests that the experts can be awarded payment for their answers. Indeed, nothing in Experts-Exchange teaches or suggests the provision of a negotiation forum for the at least one competent authority and the client to negotiate a level of award to be awarded to the at least one competent authority for the suggested solution, as in Claims 20 and 80.

For at least these reasons, Appellant submits that the Office has not established a proper *prima facie* case of obviousness against Claims 20 and 80, and that the proposed combination of Gardner and Experts-Exchange, even if deemed legally permissible or technically feasible, would fail to arrive at the provision of a negotiation forum for the at least one competent authority and the client to negotiate a level of award to be awarded to the at least one competent authority for the suggested solution. Accordingly, the rejections of Claims 20 and 80 under 35 U.S.C § 103(a) is traversed, and their withdrawal is respectfully requested.

Rejections under 35 U.S.C. § 103(a) over Gardner and Bahar

Claims 10, 21, 63, 81, 82

Dependent Claims 10, 11, 21, 63, 73, 81 and 82 depend from one or another of the independent claims discussed above, and, therefore, are submitted to be patentable for at least the same reasons as are those to corresponding independent claims.

Claim 82

Dependent Claim 82 also is patentable for the following reasons. Claim 82 relates to authorization of the level of the amount of each portion of the award before the other participants send the suggested solutions. Thus, according to Claim 82, the distribution of the portions of the award is finalized.

In one example embodiment, by virtue of the features of Claim 82 a first participant, such as the question asker, can authorize, before the other participants send their solutions, an amount of each portion of the award. This feature is useful, for example, for increasing or decreasing the reward during the solution process to award more of the award for solving more difficult portions of the question.<sup>9</sup>

As understood from Gardner, the question asker “A” only can decide the full amount of award points to award for the full solution to the question. However, the asker is not capable of authorizing a portion of the award points before the participants send their solutions. Also, Appellant notes that Gardner cannot assign an evaluation percentage prior to receiving each answer.

With regard to Bahar, at pages 4 and 5, the Office fails to even mention the features of Bahar that allegedly teach or suggest the features of Claim 82. Accordingly, the

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<sup>9</sup> It is to be understood that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

Office Action fails to set out a prima facie case of obviousness against Claim 82. Indeed the last paragraph bridging pages 4 and 5 of the Office Action does not address any of the features of Claim 82 at all.

Appellant therefore submits that the Office has not established a proper *prima facie* case of obviousness against Claim 82, and that the proposed combination of Gardner and Bahar, even if deemed legally permissible or technically feasible, would fail to teach or suggest authorization of the level of the amount of each portion of the award before the other participants send the suggested solutions. Accordingly, the rejection of Claim 82 under 35 U.S.C § 103(a) is traversed, and its withdrawal is respectfully requested.

Rejections under 35 U.S.C. §103(a) over Gardner, Bahar, and Official Notice

Claims 11 and 73

Dependent claims 11 and 73 depend from one or another of the independent claims discussed above, and, therefore, are submitted to be patentable for at least the same reasons as are those to corresponding independent claims.

## CONCLUSION

Each independent Claim is believed to be patentable for the reasons given above, and each dependent claim also is believed to be patentable, at least for the reason that each depends from a patentable base claim, in addition to any other reason set forth above.

Appellant respectfully submits that the outstanding rejections under 35 U.S.C. §102(e) and 35 U.S.C. §103(a) are deficient for at least the foregoing reasons. Reversal of those rejections is respectfully requested.

It is respectfully submitted that the final rejection of the claims should be reversed for the reasons stated.

Respectfully submitted,

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## IX. Claims Appendix

1. A server on a network, the server operable to:

receive from a first participant via the network a formulation of a problem to be solved;

receive from a plurality of other participants via the network at least non-final suggested solutions to the problem; and

distribute portions of an award to those participants who contribute the at least non-final suggested solutions to the problem,

wherein the server is configured to distribute a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem,

wherein the server provides control tools for use by the first participant for controlling the distribution of the portion of the award to the other participants and

wherein the distributions of the portions of the award are varied over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem.

4. A server according to claim 1, further operable to:

manage a discussion of the problem and the suggested solutions; and  
receive and display the discussion in real time.

5. A server according to claim 1, further operable to:

receive anonymously the formulation of the problem and the suggested solutions.

6. A server according to claim 1, further operable to:  
communicatively couple to a database adapted to store the formulation of the problem and suggested solutions.

7. A server according to claim 1, further operable to:  
store other tools for use by the other participants for controlling the distribution of the portions of the award among themselves.

8. A server according to claim 1, wherein if the first participant has not awarded all of the portions of the award to the other participants within a predetermined time, at least some of the remaining portions of the award are automatically distributed to the other participant who has received within the predetermined time the largest fraction of the award.

9. A server according to claim 1, further operable to:  
store tools for use by a presenter for controlling the award to the other participants, wherein the distribution of the portions of the award is varied over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem.

10. A server according to claim 9, wherein the other participants are viewers of a television broadcast relating to the formulation of the problem and the suggested solutions and the presenter is a television presenter for the television broadcast.

11. A server according to claim 9, where the presenter is selected by the other participants.

12. A server according to claim 1, wherein the other participants are anonymous.

13. A server according to claim 1, the tools further adapted to block the further development of a selected suggested solution.

14. A server according to claim 1, the tools further adapted to allow the first participant to select one of the suggested solutions and control the discussion and distribution of the portions of the award in the context of the selected suggested solution.

15. A server according to claim 1, wherein the formulation of the problem is related to the improvement of company processes.

16. A server according to claim 1, further operable to:  
receive a selection of at least one competent authority from the other participants on the basis of suggested solutions delivered by the at least one competent authority via the network; and  
facilitate a private problem resolution discussion between a client and the selected at least one competent authority.
17. A server according to claim 16, wherein the client is the first participant.
18. A server according to claim 16, wherein the first participant is an employee of the client.
19. A server according to claim 16, wherein the at least one competent authority is preselected before the formulation of the problem is received by the server.
20. A server according to claim 16, further operable to:  
provide a negotiation forum for the at least one competent authority and the client to negotiate a level of award to be awarded to the at least one competent authority for the suggested solution.
21. A server according to claim 4, further operable to thread the discussions.

22. A server according to claim 1, wherein the first participant authorizes the level of the amount of each portion of the award before the other participants send the suggested solutions, thereby finalizing the distribution of the portions of the award.

55. An apparatus for facilitating problem solving on a network, comprising:

- means for transmitting and receiving from a first participant via the network a formulation of a problem to be solved;
- means for transmitting and receiving from a plurality of other participants via the network at least non-final suggested solutions to the problem;
- means for distributing portions of an award to those participants who contribute the at least non-final suggested solutions to the problem; and
- means for controlling the distribution of the portions of the award including means for distributing a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem; and
- means for controlling the portion of the award to the other participants, wherein the distribution of the portions of the award is varied over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem.

56. An apparatus according to claim 55, further comprising:

means for managing a discussion of the problem and the suggested solutions  
in real time;

means for accepting input of data relating to the discussion; and

means for placing the data onto the network.

57. An apparatus according to claim 55, further comprising:

means for transmitting anonymously onto the network the formulation of the  
problem and the suggested solutions to the server; and

means for receiving the anonymous formulation of the problem and the  
suggested solutions from the network.

58. An apparatus according to claim 55, further comprising:

means for storing the formulation of the problem and the suggested solutions.

59. An apparatus according to claim 55, further comprising:

means for storing other tools for use by the other participants for controlling  
the distribution of the portions of the award among themselves; and

means for displaying and receiving off of the network a selection of the other  
tools.

61. An apparatus according to claim 55, further comprising:

means for receiving a selection of at least one competent authority from the other participants on the basis of the suggested solutions delivered by the at least one competent authority via the network;

means for accepting the selection from the other participants; and

means for facilitating a private problem resolution discussion between a client and the selected at least one competent authority.

62. An apparatus according to claim 61, further comprising:

means for providing a negotiation forum for the at least one competent authority and the client to negotiate a level of award to be awarded to the at least one competent authority for the suggested solution; and

means for providing a forum for the negotiation.

63. An apparatus according to claim 56, further comprising:

means for threading the discussions.

64. An apparatus according to claim 55, further comprising:

means for authorizing the level of the amount of each portion of the award before the other participants send onto the network the suggested solutions.

65. A method of facilitating problem solving over a network, comprising the steps of:

transmitting to a server via the network a formulation of a problem from a first participant;

receiving at the server via the network from a plurality of other participants at least non-final suggested solutions to the problem;

distributing from the server via the network portions of an award to those participants who contribute the at least non-final suggested solutions to the problem; and

controlling at the server with tools the distribution of the portions of the award to distribute a portion of the award, before it has been determined that the problem has been solved, to at least one participant who contributed the at least non-final suggested solution to the problem; and

controlling the award to the other participants, wherein the distribution of the portions of the award is varied over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem.

66. A method according to claim 65, further comprising the step of:  
varying the distributions of the portions of the award over the course of a development of the suggested solutions for the purpose of guiding the development of a final solution to the problem.

67. A method according to claim 65, further comprising the step of:  
managing a discussion of the problem and the suggested solutions in real time.

68. A method according to claim 65, wherein

transmitting anonymously onto the network the formulation of the problem and the suggested solutions to the server; and

receiving the anonymous formulation of the problem and the suggested solutions from the network.

69. A method according to claim 65, further comprising the step of:  
storing the formulation of the problem and the suggested solutions.

70. A method according to claim 65, further comprising the steps of  
storing other tools for use by the other participants for controlling the  
distribution of the portions of the award among themselves; and  
displaying and receiving off of the network selection of the other tools.

71. A method according to claim 65, wherein if the first participant has not  
awarded all of the portions of the award to the other participants within a predetermined time,  
automatically distributing at least some of the remaining portions of the award are to the  
other participant who has received within the predetermined time the largest fraction of the  
award.

72. A method according to claim 65, further comprising the steps of:  
storing tools for use by a presenter for controlling the award to the other  
participants; and

varying over the course of a development of the suggested solutions the distribution of the portions of the award for the purpose of guiding the development of a final solution to the problem.

73. A method according to claim 41, further comprising the step of:  
selecting the presenter by polling the other participants.

74. A method according to claim 65, further comprising the step of:  
blocking the further development of a selected suggested solution using one of  
the tools.

75. A method according to claim 65, further comprising the steps of:  
selecting one of the suggested solutions; and  
controlling the discussion and distribution of the portions of the award in the  
context of the selected suggested solution.

76. A method according to claim 65, further comprising the steps of:  
transmitting and receiving a selection of at least one competent authority from  
the other participants on the basis of the suggested solutions delivered by the at least one  
competent authority via the network; and  
facilitating a private problem resolution discussion between a client and the  
selected at least one competent authority.

77. A method according to claim 76, wherein the client is the first participant.
78. A method according to claim 76 wherein the first participant is an employee of the client.
79. A method according to claim 76, further comprising the step of:  
preselecting the at least one competent authority before the formulation of the problem is received by the server.
80. A method according to claim 76, further comprising the step of:  
providing a negotiation forum for the at least one competent authority and the client to negotiate a level of award to be awarded to the at least one competent authority for the suggested solution.
81. A method according to claim 67, further comprising the step of:  
threading the discussions.
82. A method according to claim 65, further comprising the step of:  
authorizing the level of the amount of each portion of the award before the other participants send the suggested solutions, thereby finalizing the distribution of the portions of the award.

93. A server according to claim 6, further operable to:  
receive from at least one visitor a quality assessment of the suggested  
solutions.

94. A server according to claim 6, further operable to:  
determine a quality assessment based on the portions of the award received for  
the respective suggested solutions.

98. An apparatus according to claim 55, further comprising:  
means for receiving from at least one visitor a quality assessment of the  
suggested solutions.

99. An apparatus according to claim 55, further operable to:  
means for determining a quality assessment based on the portions of the award  
received for the respective suggested solutions.

100. A method according to claim 65, further comprising the step of:  
receiving from at least one visitor a quality assessment of the suggested  
solutions.

101. A method according to claim 65, further comprising the step of:  
determining a quality assessment based on the portions of the award received  
for the respective suggested solutions.

X. Evidence Appendix

None.

XI. Related Proceedings Appendix

None.

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